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ON THE STUDY OF JEWISH LAW.

It is a well-known secret that the modern candidate for the office of Rabbi possesses, after the conclusion of his course of study, but slight knowledge of the Talmud, although he has spent as a rule five or six years at the Seminary in its study. This is all the more to be wondered at when it is remembered that an industrious jurist needs generally not more than three years to complete his course, and during this time devotes himself to several branches of law, and when he receives his degree is much more at home in the *Corpus Juris Civilis* than a young Rabbi is at home in the Talmud.

It may perhaps be answered that the jurist learns Latin at the Gymnasium during eight or nine years, and that consequently he is well acquainted with the language of the *Corpus Juris* when he enters the University, but that the student for the Rabbinate, at any rate the German student, when he enters the Seminary, has but slight knowledge of Hebrew, and specially of Talmudical Hebrew. There would be something in this argument were it not the fact that the Rabbinical student, while at the University, devotes himself almost entirely to Hebrew studies. The majority of Jewish theologians select Oriental studies as their principal subject when they are candidates for the degree of Ph.D. We should therefore expect that the Rabbi would know the Talmud, not merely in the same way as the average jurist knows his *Corpus Juris*, but to the same degree as a specialist in Roman Law knows it, who has studied classical philology and history in order to learn more thoroughly classical Roman Law. But unfortunately among the younger Rabbis, not only do we not find specialists in the study of the Talmud, but we also do not find men among them possessing what could be esteemed an average knowledge. He who does not bring his knowledge of the Talmud with him from Poland, Russia, Galicia, or Hungary, will not leave the Seminary as a great Lamden. To such a pass have things come in recent times that candidates for the ministry have competed and received offices without passing the examination for the Rabbinical diploma, but have relied solely upon the University examination in philosophy

and upon their obtaining in the end from the Seminary a leaving certificate.

But the question should be carefully considered, why it is that a candidate for the Rabbinate is unable to learn that which every candidate for the legal profession is able to learn, and the *studiosi juris* are by no means regarded as the most diligent of University students. We think that the only reason is to be found in the old-fashioned mediaeval, scholastic method in which the Talmud is taught in theological seminaries. I once by accident listened to a lecture of a Talmudical teacher in a modern Seminary, and I was astonished to find that his method was exactly that of a Rabbi of Brest or Kalisz. This method, though it may be appropriate for the Russian-Polish "Yeshibah Bachur," is not fitted for the modern Seminary student. The former does not learn in the strict sense from the Rosh Yeshibah. He has a conversation with him, and disputes with him. The modern Seminary student is after all but a beginner, and what astonishment would be felt by a European jurist if he knew that a *studiosus juris* was tortured in the first instance with the Romanistic interpretations before he had the very slightest conception of the Institutes.

But we must never forget that the Talmud is a law-book; it is the *Corpus Juris* of the Jews, and whoever wishes to learn the Talmud in a modern spirit should possess at least as much legal understanding and legal method as an Alfasi or Maimonides. In many respects we are much "advanced," but Alfasi and Maimonides were more "advanced," more susceptible to the best ideas of their times than our Progressists. Alfasi soon discarded the exegetical method, which is general to-day among the Talmud teachers, and which was customary among Romanists, the Pandect teachers, till the sixteenth century. It was only in the sixteenth century that the Pandectists introduced, if I may so express myself, the legal systematic method of Alfasi, and only at the end of the eighteenth century did they begin to teach Roman Law in a systematic method, without too close a reference to the sources. This method, which generally bears the name of the Hugo Thibaut method (Hugo's Institutes appeared in 1798, Thibaut's Pandects in 1803), was first employed by Maimonides in the *Yad Hachazakah* in the twelfth century.

If we are to make some propositions for reform, we think that the most correct thing would be to adopt the method customary in the juristic faculties of the Universities. In the first year the modern Talmud pupil should study the Institutes of Jewish Law. The aim of the Institutes should be to lay clearly before him in German the main principles of Jewish-Talmudical Law. The Hebrew *termini technici* can be learnt with a comparatively slight knowledge of Hebrew. We

see in Switzerland how female students who have never visited a classical gymnasium, and who do not know Latin, easily learn the immense number of anatomical ideas in Latin, and in no way in their knowledge of anatomy stand behind men who have enjoyed a classical education. In the second year a beginning might be made with the interpretation of easier passages of the Mishnah or Yad Hachazakah, and in the third year only should the Talmud itself be studied. At the same time lectures and exercises in Talmudical history should not be neglected. Dry legal dogmatism is not merely tiring and repelling for the beginner, but offers little or no results. Legal dogmatism, without the history of legal development, is like the body without the soul.

The reform of the method of teaching must be followed by a reform in the matter taught. The present system, in accordance with which civil and ritual laws are taught by the same person, must be absolutely given up. The teacher of *fas* cannot be also teacher of *jus*. This is demanded first by the fact that legal inquiries demand free, unprejudiced, scientific research; and secondly by the fact that our age is an age of specialization. One thing is required of the Seminary Rabbi, the teacher of Ritual, and another thing is required of the Civilist, the legal historian, of one engaged in the study of social phenomena. Each of these needs special training. In other words, the Church must be separated from the State. The teacher of religious ritual neither can nor dare be teacher of the Institutes of Civil Law. I do not wish it to be understood in saying this that the latter must represent a certain standpoint. He may be either an Oettli or a Wellhausen.

The new system of teaching would first result in making the young candidate for the Rabbinate better and more quickly acquainted with the Talmud. The Talmud and Talmudical literature are the chief sources from which we learn the spirit of Judaism and Jewish history. Rabbis ought at length to appropriate this knowledge of the spirit of their religion, although they may be compelled to give up some of their spiritual reading of sermons. Even the Talmudists separated Ritual from civil law (אסורי וריני), and made the civil law the foundation of the whole legal edifice (הרצה שיחכים יעסוק בריני) (ממונות).

In the east of Europe the student of the Talmud begins his studies with the civil law, and in all juristic faculties the institutes of the Roman private law and then the Pandects serve as introduction to the study of law. He who knows his Pandects well can much more easily and quickly grasp public law, criminal law, and ecclesiastical law.

The giving up of the Beth-Hammadrah method and the going over

into a more modern one would have the further consequence that the Talmud would much sooner begin to be studied scientifically. Up till now the works on the Talmud have been either of an apologetic character, or have consisted mainly of biographies of celebrated Talmudists. We ought indeed to lay stress on the fact that the modern Jewish scholar, who generally is also a theologian, must find it either difficult or impossible to treat the Talmud from an objective scientific standpoint. We by no means wish to reproach theologians either with a want of objectivity or a want of honesty. Human consciousness is determined by social conditions, and Christian theology would not have had its Stades and Wellhausens had they not been engaged in perfectly free and independent academic teaching and research. The Stades and Wellhausens afford us the best proof that social surroundings in their relationship to Christian theology determine historical consciousness when an opinion is expressed about ancient Judaism, and more especially about the Judaism of the time of Jesus. The Stades, the Wellhausens, the Renans cannot bring themselves fully to acknowledge that a movement at a certain period and in a certain class of society is the product of the circumstances ruling at that period and in that class. A movement can only strike firm roots when it has a fertile soil to nourish it in the social surroundings in which it arose. Christianity arose in a certain class of ancient Judaism, and it was accepted by a certain class in the non-Jewish world. The conclusion is easily drawn that Christianity was fitted for a certain class of society in the non-Jewish ancient world; it was also fitted for that portion of Jewish society in which it arose. But this portion was only a small, a vanishing portion of the Jewish people, and on this account, and not on account of any wickedness of the Pharisees, Christianity never gained any right of citizenship amongst the whole people. The Salvation Army is a product of the conditions in Whitechapel, and therefore the Salvation Army will fail to find adherents among men who live under quite different conditions. Stade, Wellhausen, and Renan would just as little as a Sydney Webb or a simple Trade Unionist feel the need to be converted to the Salvation Army.

If we have no very great hopes of legal-historical works by theologians, we may still believe that the dogmatical works on the Talmud will be more scientific than heretofore, more professional. We also think that we have the right to assume that a scientific Simon Raphael Hirsch will produce another Abraham Geiger. Perhaps too non-theological historians and jurists will devote some of their time to the Talmud, and although we shall have fewer Germanists and Romanists, we shall have more Talmudists. The thing to be

desired would be that the Talmud, that is to say, Jewish Law, in our sense of the term, should be studied, not at a theological institution, but at a secular school. As affairs are at present there is little hope, at any rate on the Continent of Europe, that a Talmudical Chair will be established, and perhaps, unless Christian theologians take in hand a scientific juristic study of the Talmud, it is possible that the Talmud, in the form of Pandects of the Jewish Law, will first be treated in Jerusalem. Bible criticism, Biblical exegesis, Hebrew grammar, the history of the people of Israel, have been given us by Christian theologians; our own learned men have only time for biographies and fresh editions of ancient MSS. which are read by none. The poet Judah Gordon was not altogether in the wrong when he said: "What is our people, what is its literature? A dead hero, the whole world is its grave, and its literature is its epitaph." It is indeed true that modern literature on the science of Judaism deserves no other name than the epitaph of Judaism. Let it therefore be proclaimed to our learned men: "We still move, we still live; we have no need of the graves of the dead."

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